

MT LEGISLATIVE HISTORY

Chapter 261 19 69

Bill H (S) 115

Original bill & hist. NO C

H. Committee on State Administration

S. Committee on State Administration

Hearing Date(s) Feb 22 ✓ C

Hearing Date(s) Jan 31 ✓ C

Feb 25 ✓ C

Feb 03 ✓ C

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Date Out _____ C

_____ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

January 31, 1969
8:00 a.m.

A regular meeting of the Senate Committee on State Administration was called to order on the above date in room 410 by Chairman James with a quorum present.

HOUSE BILL 72, proponent, Mr. Ed Kellner, representing the Department of Institutions, explained the bill as involving the establishment of a prisoner furlough program. He stated that last summer at the American Correctional Congress in Washington D.C., almost every person who had worked with this type of program favored this approach. He stated that it was first used in 1913, is used by the federal government and some foreign countries. If this person committed a crime during this period, he would not only receive a sentence, but would be returned to the prison to finish his original term. Warden, Ed Ellsworth, stated he was also a proponent of the legislation. Judge Stuart assisted in drafting this bill. In closing, Mr. Kellner stated that rehabilitation would be more possible under this program and that the matter of incentive is most important.

SENATE BILL 34 was opposed by Warden Ed Ellsworth. He felt that this type of program having been repealed in 1963 was a factor to consider and further, that correctional officers are hard to find and are not terminated indiscriminately. Mr. Ellsworth stated this would only waste a great deal of time and money of the state because many trips to Helena would have to be made to appear before the State Board of Institutions. He stated that every grievance in employment has been worked out satisfactorily in the last seven years. Mr. Ed Kellner stated that at present, if any case could not be resolved, the Board of Institutions would hear the case.

SENATE JOINT RESOLUTION 9 was reviewed by Senator Mitchell and Senator James; this dealt with osteopathy. Following discussion, Senator Mitchell moved that SENATE JOINT RESOLUTION 9 DO PASS. This was seconded by Senator Rostad and unanimously carried.

SENATE JOINT RESOLUTION 12, dealing with administrative procedures, was discussed and Senator McKeon moved SENATE JOINT RESOLUTION 12 DO PASS. This was seconded by Senator Mackay and carried unanimously.

HOUSE BILL 72 BE CONCURRED IN was moved by Senator McDonald, seconded by Senator Rostad and carried, with Senator McKeon registering his opposition.

SENATE BILL 34 DO NOT PASS was moved by Senator McKeon, seconded by Senator Mackay and carried unanimously.

Mr. Strand and three students from the C. R. Anderson school were introduced as visitors as were three students from the University of Montana.

SENATE BILL 115, introduced by Senator Frank Hazelbaker, was explained by him. The bill was prepared by attorney, Chad Smith,

page 2, 1-31-69, 9:00 a.m., State Administration

at the request of the Montana Real Estate Commission. Mr. Lowell Purdy, chairman of the Montana Real Estate Commission, appeared as a proponent of the bill. Those proponents present agreed to omit section 12 of the bill.

The committee was called into executive session for the discussion of SENATE BILL 31, personnel study for the state. Mrs. Dolores Colburg appeared as an opponent of the legislation and author, Senator Wm. Bertsche, appeared to answer questions from the committee. A straw vote of the committee was taken on various principles of the bill.

The committee agreed to meet again on Monday morning, February 24, on this bill, at which time, the meeting was declared adjourned.

12-20-2

SENATOR JAMES

NAME: Vern Cougill DATE: 11-24/69

ADDRESS: Helena MONTANA

REPRESENTING WHOM? MONTANA ASSN of Real Estate Boards

APPEARING ON WHICH BILL? SB 115

DO YOU: SUPPORT? Yes. AMEND? No OPPOSE? No.

COMMENTS: Proposed changes of Real Estate license
law have been reviewed by Real Estate Boards
in The State and They are in agreement
that These proposed changes will both clarify
and strengthen The Commission's ability to
supervise The industry

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

February 3, 1969
Monday, 8:00 a.m.

Chairman James called to order the STATE ADMINISTRATION Committee meeting on the above date with the full committee being present.

SENATE BILL 256 was discussed. A motion was made by Senator McKeon and seconded by Senator Mitchell that this bill be referred to the Committee on Commerce and Labor. The motion was carried.

SENATE BILL 143 proponents were: H. F. Weggenman, Department of Administration, Acting State Controller; Mr. Carl L. Kuney, Chief of Accounting in the Department of Administration; and Mr. Morris Brusett, Legislative Auditor.

SENATE BILL 82's author, Senator McGowan, was present to review the bill. A motion was made by Senator Rostad and seconded by Senator McDonald that on page 2, line 27, the \$15 be deleted and insert \$20. The motion was carried. It was moved by Senator Mackay that the title also be amended to include the change of \$15 to \$20. The motion was seconded by Senator Rostad and carried. Senator Mackay and Senator Rostad moved and seconded that SENATE BILL 82, AS AMENDED, DO PASS.

SENATE BILL 143, DO PASS. The motion was made by Senator McDonald, seconded by Senator Mackay, and carried.

SENATE BILL 115 was put into a sub committee upon motion of Senator Rostad and seconded by Senator Lyon and carried. The sub committee consists of Senators McDonald and Rosell.

SENATE BILL 123 was reviewed by Mr. Sam Giluly, Director of the State Historical Society, proponent. The archives bill dealing with noncurrent records which are important for research. According to the Jacobs Study information, in the future it would call for a \$9,000 to \$10,000 salary for an archivist intern. Senator Mackay moved that SENATE BILL 123 DO PASS. It was seconded by Senator Mitchell and carried.

SENATE JOINT RESOLUTION 26 was reviewed by author Senator Thiessen. He stated that approximately \$400,000 is appropriated each year for insurance for the state's buildings alone. The state needs a deductible self-insurance which would then be re-insured with a good company. He said that the person who carries the insurance for the state agrees that this should be done as a good, prudent business transaction. SENATE JOINT RESOLUTION 26 DO PASS was moved by Senator Rostad, seconded by Senator Mackay and unanimously carried.

ended by Senator McKeon and carried. Senator McKeon moved SENATE BILL 277 AS AMENDED DO PASS. The motion was seconded by Senator McDonald and carried.

SENATE BILL 115 sub committee, Senator Rosell, reported and then moved the amendment in section 3, page 4, lines 10 and 11. The motion was seconded by Senator McKeon and carried. Senator Lyon moved amendments to section 5 of the bill, subsection 16. The motion was seconded by Senator Nees and unanimously carried. Senator McKeon moved SENATE BILL 115 AS AMENDED, DO PASS. The motion was seconded by Senator Lyon and carried.

SENATE BILL 148 subcommittee of Senator McKeon reported and asked for further time.

SENATE BILL 258 was reported on by the subcommittee of Senators McDonald and Rosell. Senator Rostad moved that SENATE BILL 258 DO NOT PASS. The second was made by Senator McKeon and was unanimously carried.

Chairman James declared the meeting adjourned.

JAMES

STATE ADMINISTRATION COMMITTEE

February 22, 1969

The State Administration Committee met on Saturday, February 22, 1969, at 10:30 A.M. in Room 434 of the State Capitol with Chairman Ulmer presiding. Fifteen members were present.

Hearings on the final bills remaining in the State Administration Committee were scheduled.

SB317..Senator Reber, sponsor, explained the bill. It would provide retirement at the age of 60 for some state employees and extend retirement privileges to legislators. Others appearing on behalf of the bill were Rep. John Lyon; Mr. Floyd Young, Consulting Actuary; Eldon Hartse and George Hammond of the AFL-CIO County-State Municipal Union and James Morris of the Montana Prison Employees Association. Rep. Nyquist appeared as an opponent to the bill.

SB31..This bill was the result of the Jacobs Study which surveyed personnel classifications. Senator Bertsche discussed the goals and purposes of the bill. He was joined in approval of the bill by Mr. George Hammond representing the AFL-CIO County-State Municipal Union. Others appearing on behalf of the bill were Senator Mitchell, Mrs. Dorothy Eck of the League of Women Voters, Tom Tobin of the Highway Employees and Ross Cannon representing the court reporters. Mrs. Ida Dickson appeared as an opponent to suggest an amendment which would make the bill favorable to the Warm Springs Hospital employees.

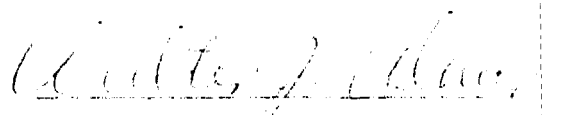
SB144..Senator Haughey, sponsor, called attention to an amendment for the bill. The bill would impose a charge on passenger fares to be used for airport facilities. Senator Deschamps and Hugh Kelleher of the Helena Airport appeared as proponents to the bill. Opposing the bill were John Cavin, Aircraft Association lobbyist; Charles Hayworth of Northwest Airlines; Rex Hibbs, attorney, and Pat Hooks of the Air Trades Association.

SB115..Chadwick Smith represented the sponsor of the bill, deceased Senator Vainio. The bill would tighten up the law on the Licensing Act for real estate salesmen and real estate brokers. He suggested an amendment to the bill. There were no opposing witnesses.

Upon completion of the testimony, because of the time element, the committee moved to have an executive session on adjournment of the House on Monday, February 24, for final action on the bills. Motion carried.

Chairman Ulmer suggested the committee use the regular meeting times for group study and discussion in preparation for the 1971 Legislature. This was favorable.

Meeting adjourned at 1:00 P.M.


WALTER J. ULMER, Chairman

February 25, 1969

The State Administration Committee met in Room 434 of the State Capitol on Tuesday, February 25, 1969, for the purpose of voting on the remaining bills scheduled in the committee. Chairman Ulmer presided at the meeting and fourteen members were present.

SB1 was explained by Rep. Swan who offered an amendment to the bill. Rep. Swan moved the bill BE CONCURRED IN. Motion carried. Rep. Swan will carry the bill on the floor.

SB21..Rep. Jurcich moved the bill BE NOT CONCURRED IN. Motion carried.

SB195..Sen. McGowan appeared before the group to explain the bill, one which would require the title of a junked car to be sent to the Registrar of Motor Vehicles. After discussion on the measure, Rep. Newby moved the bill BE CONCURRED IN. He then withdrew his motion. Rep. Stratton then moved the bill BE NOT CONCURRED IN. Motion carried.

SB115..a bill to set up standards for real estate salesmen and brokers was discussed by Rep. Scott. He offered amendments to the bill. Rep. Scott moved the bill BE CONCURRED IN as amended. Motion carried. Rep. Scott will carry the bill on the House floor.

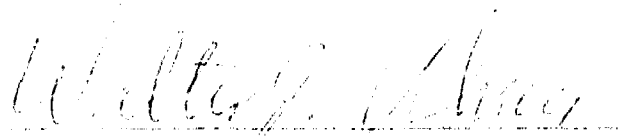
SB144..Rep. Newby explained the bill would levy a tax on passengers using certain airport facilities. He offered an amendment. Rep. Newby moved the bill BE CONCURRED IN as amended. Motion carried. The vote was 6-4. Rep. Newby will handle it on the floor.

SB31..Rep. Scott moved to amend the bill, a personnel study of job classifications. Rep. Burnett moved to offer an amendment. Rep. Burnett then withdrew his motion. The committee then voted on Rep. Scott's amendment. Motion failed. Rep. Swan then introduced several amendments. The committee passed one of the amendments. Rep. Swan moved the bill BE CONCURRED IN as amended. Motion carried. Rep. Melcher and Rep. Burnett will carry it on the floor.

SB317..Rep. Carl Smith offered an amendment to the bill, one which would lower the age of retirement to 62. Rep. Burnett moved the bill BE NOT CONCURRED IN. Motion failed. Rep. Feda moved the bill BE CONCURRED IN as amended. Motion carried.

Chairman Ulmer announced that this was the last of the bills assigned to the State Administration Committee. He expressed his gratitude for the promptness in handling the bills. He outlined the tentative schedule of seminars for the committee: Thursday, 10:30 A.M. Keith Colbo, Budget Director; Saturday, 10:30 A.M. Dr. Em. Diehl, Department of Research at the University of Montana; and Tuesday, 10:30 A.M. Tom Dundas, Information Services Director.

Meeting adjourned at 11:30 AM.



WALTER J. ULMER, CHAIRMAN

used herein shall not be construed to mean occasional or intermittent light employment where the ability to do manual labor is not essential, but shall mean any person having an income from any other source exceeding one hundred fifty dollars (\$150.00) per month.

(b) Has resided in and been an inhabitant of the state of Montana for ten (10) years, or more, immediately preceding the date of the application.

(c) Has silicosis and is entitled to payments under this act, but who is not at the time of receiving a payment an inmate of a penal institution, or is not a patient or inmate of any institution for the treatment of mental diseases, or is not a patient in a medical institution as a result of having been diagnosed as having a psychosis. If the person to whom payment has been ordered to be paid is an inmate of Montana State Tuberculosis Sanatorium, then and in that case the payment herein provided for shall be made to his wife and children, if any.

(d) Is not receiving, with respect to any month for which he would receive a payment under this act, compensation under the Workmen's Compensation Act of the state of Montana, as provided by Chapter 155, Laws of 1959, which will equal the sum of *one hundred forty dollars (\$140.00)* hereunder. If he is receiving payments under the Workmen's Compensation Act, as provided by Chapter 155, Laws of 1959, which is less in the aggregate than *one hundred forty dollars (\$140.00)*, then he is entitled to a payment under this act of the difference between the amount received under the Workmen's Compensation Act, as provided in Chapter 155, Laws of 1959, and *one hundred forty dollars (\$140.00)* per month."

Amending clause.

Section 2. That Section 71-1004, Revised Codes of Montana, 1947, as last amended by Chapter 267, Montana Session Laws, 1965, be and the same is hereby amended to read as follows:

Amounts of payments.

"71-1004. **Amounts of payments.** Subject to the provisions of this act and the deductions herein provided, any person who has silicosis, as defined in this chapter, and who has, subject to the regulations and standards of the industrial accident board; been determined by the industrial accident board to be entitled to a payment un-

der this chapter for silicosis, shall be granted a payment by the said industrial accident board of *one hundred forty dollars (\$140.00)* per month subject to such appropriations as may from time to time be made. The legislature shall authorize such additional appropriations as may be necessary to make the increased monthly payments provided herein."

Section 3. That Section 71-1008, Revised Codes of Montana, 1947, as last amended by Chapter 267, Montana Session Laws, 1965, be and the same is hereby amended to read as follows:

Amending clause.

"71-1008. **Conformity with acts of federal government.** If and when the government of the United States makes grants to states in aid of and allowing payments to persons having silicosis, as herein defined, the industrial accident board of the state of Montana is hereby authorized to administer in the state of Montana such grants-in-aid and payments in addition to grants made by this act. The total payments to any individual under this act shall not exceed *one hundred forty dollars (\$140.00)* per month exclusive of any grants made by Congress."

Conformity with acts of federal government.

Section 4. All acts and parts of acts in conflict herewith are hereby repealed.

Repealing clause.

Approved: March 7, 1969.

CHAPTER NO. 261

An Act Amending Sections 66-1924, 66-1925, 66-1929, 66-1933, 66-1937, 66-1940, and 66-1941, R.C.M., 1947, Which Sections are a Part of the Real Estate License Act of 1963, by Redefining the Words "Broker" and "Salesman", by Establishing Additional Standards for Licensing Brokers and Salesmen, by Amending Bonding Requirements for Brokers and Salesmen, and by Providing a Penalty for Acting as a Broker or Salesman When License is Suspended or Revoked; Establishing Revised Hearing Procedures; and Repealing Sections 66-1938 and 66-1942, R.C.M., 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause.

Section 1. Section 66-1924, R.C.M., 1947, is amended to read as follows:

Title—license required.

"66-1924. **Title—license required.** This act shall be known and may be cited as the 'Real Estate License Act of 1963.' From and after the effective date of this act it shall be unlawful for any person to engage in or conduct, directly or indirectly, or to advertise or hold himself out as engaging in or conducting the business, or acting in the capacity of a real estate broker or a real estate salesman within this state without first having procured a license as such broker or salesman, or otherwise complied with the provisions of this act."

Amending clause.

Section 2. Section 66-1925, R.C.M., 1947, is amended to read as follows:

"66-1925. **Definitions.** As used in this act, the following terms shall have the following meanings except where the context clearly indicates that another meaning is intended:

"Real estate."

(a) The term 'real estate' shall include leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold or nonfreehold, and whether the real estate is situated in this state or elsewhere.

"Broker."

(b) The term 'broker' shall include any individual who for another, or for a fee, commission or other valuable consideration, or who with the intent or expectation of receiving the same, negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange or lease of any real estate or of the improvements thereon, or collects rents or attempts to collect rents, or advertises or holds himself out as engaged in any of the foregoing activities. The term 'broker' also includes any individual employed by or on behalf of the owner or owners, or lessor or lessors of real estate, to conduct the sale, leasing, subleasing or other disposition thereof at a salary or for a fee, commission or any other consideration; it also includes any individual who engages in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby he undertakes primarily to promote the sale, lease or other disposition of real estate within this state through its

listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both. Corporations, partnerships and associations shall not be licensed under this act but nothing in this act shall prevent a corporation or partnership from acting as a real estate broker provided that every corporation officer, and every partner, actually negotiating or attempting to negotiate the listing, sale, purchase, rental, exchange or lease of any real estate or of the improvements thereon, or collecting rents or attempting to collect rents, on behalf of said corporation or partnership, shall be licensed as a broker. All officers of any corporation or all members of any partnership, acting as a broker, shall be deemed in violation of this act unless there be full compliance with the provisions of this subsection.

(c) The term 'salesman' shall include any individual who, for a salary, commission or compensation of any kind, is employed, either directly, indirectly, regularly or occasionally, by any real estate broker to sell, purchase or negotiate for the sale, purchase, exchange or renting of any real estate. "Salesman."

(d) The term 'person' shall mean and include individuals, partnerships, associations and corporations, foreign and domestic, except that when referring to a person licensed under this act it shall mean an individual. "Person."

(3) The term 'he' shall mean and include 'she' and 'it.' The term 'his' shall mean and include 'her' and 'its.' "He" to include.

Section 3. Section 66-1929, R.C.M., 1947, is amended to read as follows: Amending clause.

"66-1929. **Licenses—applicants for licenses.** (a) Licenses shall be granted only to individuals who are deemed by the commission to be of good repute and competent to transact the business of a broker or salesman in such manner as to safeguard the interests of the public. Licenses—applicants for licenses.

(b) Each applicant for a broker's license shall be a citizen of the United States; shall be at least twenty-one (21) years of age; shall have graduated from an accredited high school or shall have completed an equivalent education as determined by the commission; shall have been actively engaged as a licensed real estate salesman

for a period of two (2) years or shall have had experience or special education equivalent to that which a licensed real estate salesman ordinarily would receive during such two (2) year period as determined by the commission, except that if the commission shall find that an applicant could not obtain employment as a licensed real estate salesman because of conditions existing in the area where he resides, the commission may waive this experience requirement; and must file an application for license with the commission. The commission shall require such information as it may deem necessary from every applicant to determine his honesty, trustworthiness and competency.

(c) Each applicant for a salesman's license shall be at least twenty-one (21) years of age; shall have received credit for completion of two (2) years of full curriculum study at an accredited high school or shall have completed an equivalent education as determined by the commission; and must file an application for license with the commission. His application shall be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect. The commission shall issue to each licensed broker and to each licensed salesman a license and a pocket card in such form and size as the commission shall prescribe."

Amending clause.

Section 4. Section 66-1933, R.C.M., 1947, is amended to read as follows:

Bond of brokers and salesmen.

"66-1933. **Bond of brokers and salesmen.** No license shall be issued or renewed until the applicant for a broker's license or salesman's license has filed a bond with the commission in the sum of ten thousand dollars (\$10,000.00), executed by a surety company duly authorized to do business in the state of Montana in a form approved by the commission and conditioned that the applicant, if and when licensed, shall conduct his business and himself in accordance with the provisions of this act, and further conditioned that the applicant, if and when licensed, shall pay, to the extent of ten thousand dollars (\$10,000.00), all judgments recovered against him for loss or damage to any person arising in the course of the applicant's practice as a real estate broker or salesman.

All bonds given by licensees under the provisions of this act, after approval, shall be filed and held in the office of the commission. If for any reason the bond of any broker or salesman shall become cancelled or void, the license of such broker or salesman shall be automatically suspended until such broker or salesman shall be again fully bonded as herein provided and said bond has been approved by the commission. If such suspension is not terminated by rebonding and approval within thirty (30) days from the date of suspension, the license of such broker or salesman shall be automatically revoked."

Section 5. Section 66-1937, R.C.M., 1947, is amended to read as follows: Amending clause.

"66-1937. **Grounds for refusal—suspension or revocation of license.** The commission may, upon its own motion, and shall, upon the sworn complaint in writing of any person, investigate the actions of any real estate broker or any real estate salesman and shall have the power to revoke or suspend any license issued under this act whenever the broker or salesman has been found guilty by a majority of the commission of any of the following practices:

Grounds for refusal—suspension or revocation of license.

- (1) Intentionally misleading, untruthful or inaccurate advertising, whether printed or by radio, display or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies or services of the business conducted;
- (2) Making any false promises of a character likely to influence, persuade or induce;
- (3) Pursuing a continued and flagrant course of misrepresentation, or making false promises through agents or salesmen, or any medium of advertising, or otherwise;
- (4) Use of the term 'realtor' by a person not authorized to do so, or using any other trade name or insignia of membership in any real estate organization of which the licensee is not a member;
- (5) Failing to account for or to remit any money coming into his possession belonging to others;
- (6) Accepting, giving or charging any undisclosed commission, rebate or profit on expenditures made for a principal;

(7) Acting in a dual capacity of broker and undisclosed principal in any transaction;

(8) Guaranteeing or authorizing or permitting any person to guarantee future profits which may result from the resale of real property;

(9) Offering real property for sale or lease without the knowledge and consent of the owner or his authorized agent or on any terms other than those authorized by the owner or his authorized agent;

(10) Inducing any party to a contract of sale or lease to break such contract for the purpose of substituting, in lieu thereof, a new contract with another principal;

(11) Accepting employment or compensation for appraising real property contingent upon the reporting of a predetermined value or issuing an appraisal report on real property in which he has an undisclosed interest;

(12) Negotiating a sale, exchange or lease of real property directly with an owner or lessee if he knows that such owner has a written outstanding contract in connection with such property, granting an exclusive agency to another broker;

(13) Soliciting, selling or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(14) Representing or attempting to represent a real estate broker, other than the employer, without the express knowledge or consent of the employer;

(15) Failing voluntarily to furnish a copy of any written instrument to any party executing the same at the time of its execution;

(16) Paying a commission in connection with any real estate sale or transaction to any person who is not licensed as a real estate broker or real estate salesman under this act;

(17) Intentionally violating any reasonable rule or regulation promulgated by the commission in the interests of the public and in conformance with the provisions of this act;

(18) Failing, if a salesman, to place, as soon after receipt as is practicably possible, in the custody of his registered broker, any deposit money or other money entrusted to him *as salesman* by any person;

(19) Demonstrating his unworthiness or incompetency to act as a broker or salesman.

(20) Conviction of a felony."

Section 6. Section 66-1940, R.C.M., 1947, is amended to read as follows: Amending clause.

"66-1940. **Penalties—legal actions.** (a) Any *individual* acting as a broker or salesman without a license *or while his license is suspended or revoked*, or any person who *violates any provision of this act*, shall be guilty of a misdemeanor and upon conviction thereof by a district court of this state shall be punishable by a fine of not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00) or by imprisonment for a term not to exceed ninety (90) days, or both. Upon conviction of a second or subsequent violation, the person shall be punishable by a fine of not less than five hundred dollars (\$500.00) or more than two thousand dollars (\$2,000.00) or by imprisonment for a term not to exceed six (6) months, or both.

Penalties—legal actions.

(b) In case any person in a civil action is found guilty of having received any money, or the equivalent thereof, as a fee, commission, compensation, or profit by or in consequence of a violation of any provision of this act, he shall in addition be liable to a penalty of not less than the amount of the sum of money so received and not more than three times the sum so received, as may be determined by the court, which penalty may be recovered in any court of competent jurisdiction by any person aggrieved.

(c) Any person sustaining damages by failure of a real estate broker or real estate salesman to comply with the provisions of this act, shall have the right to commence an action in his own name against the real estate broker and his surety, or the real estate salesman and his surety, or both the broker and any salesman employed directly or indirectly by such broker and their respective sureties, for the recovery of any damages sustained

as the result of any act specified in section 66-1937 herein or as a result of the failure of the real estate broker or real estate salesman to comply with the provisions of this act. In all cases where suit is brought against the broker or the salesman, and his surety, the court shall, upon entering judgment for the plaintiff, allow as a part of the costs of suit a reasonable amount as attorney's fees.

All penalties provided for by this section may be collected from the broker's and salesman's bonds provided by section 66-1933."

Amending clause.

Section 7. Section 66-1941, R.C.M., 1947, is amended to read as follows:

Action for compensation.

"66-1941. **Action for compensation.** Any person engaged in the business of or acting in the capacity of a real estate broker or real estate salesman within this state shall not be permitted to bring or maintain any action in the courts for the collection of compensation for the sale or lease or otherwise disposing of real estate without first alleging and proving that such person was a duly licensed real estate broker or real estate salesman or authorized to act as a broker under the provisions of this act at the time the alleged cause of action or claim arose."

Hearings—
procedure.
Notice of hearing
upon complaint.

Section 8. **Hearings—procedure.** (a) Notice of hearing upon complaint. When the commission shall have investigated an application for a real estate broker's or salesman's license or investigated the actions of a real estate broker or salesman upon the sworn complaint in writing of any person, or upon its own motion, and such investigation shall have revealed reasonable grounds for denying such application, or reasonable indication of a violation of any of the provisions of this act as cause for revoking or suspending a license issued to any real estate broker or salesman, the commission shall, before denying the application or revoking or suspending the license, set the matter for hearing and give twenty (20) days' notice of hearing the same, in writing, to the applicant or licensee, by registered mail, return receipt requested, addressed to the last known address of such applicant or licensee, and if such licensee is a real estate salesman, or such applicant seeks a salesman's license, such notice shall also be sent to the broker employing him or in whose employ he seeks to enter, at such broker's last known business address by registered mail, return receipt requested. If a written

complaint or charges have been filed with the commission or prepared by it, a copy thereof shall be attached to and sent with each of the notices. The notice shall be substantially in the following form:

Form of notice.

BEFORE THE MONTANA REAL
ESTATE COMMISSION

In the Matter of the (Application of)
John Doe for a Real Estate Broker's)
License) or (Charge Against John)
Doe, a Licensed Real Estate Broker,)
for Violation of the Real Estate)
Licence Act of 1963).)

NOTICE OF
HEARING

THE STATE OF MONTANA SENDS GREETING TO:

(1) YOU ARE HEREBY NOTIFIED that the Montana Real Estate Commission has investigated your application for a real estate broker's (salesman's) license and such investigation has revealed reasonable cause to set said matter for hearing at o'clock M., on 19....., at Montana.

(or)

(2) YOU ARE HEREBY NOTIFIED that the Montana Real Estate Commission has received a sworn complaint concerning your action as a real estate broker (or salesman), (hereto attached) alleging as follows (or has charged you with the following violation):

That this commission has investigated said complaint (or has of its own motion investigated your action as a real estate broker-salesman) and found reasonable cause to set said matter for hearing at o'clock M., on 19....., at Montana. You shall respond to the charges above (or hereto attached) by filing your written answer to the charges with the commission in triplicate within fourteen (14) days from the date of mailing of this notice.

(and)

You shall appear at the time and place above mentioned and produce what evidence and witnesses you may have. If you fail to appear at the hearing, and good cause for continuance is not shown, the commission will render its decision upon the evidence presented to it.

Dated at Helena, Montana, this day of, 19.....

MONTANA REAL ESTATE COMMISSION

.....
Chairman

The licensee or applicant shall file an answer to the charges within fourteen (14) days after notice has been mailed by the commission. Upon receipt of the written answer of the person charged, the chairman of the commission will send a copy of said answer to the person or persons presenting the sworn complaint, if any, and one copy to each member of the commission.

Commission
hearing and
decision—appeal.

(b) **Commission hearing and decision—appeal.** The hearing may be held in the offices of the commission in Helena, Montana, or elsewhere, as the commission shall order. All hearings shall be open to the public and conducted informally insofar as an orderly presentation will permit. Any interested party shall have the right to be heard in person or by counsel, and any interested party or a member of the commission may examine or cross-examine any witness at the discretion of the chairman. The chairman may administer oaths, examine the witnesses and take any evidence he deems pertinent to the determination of the charges. The commission shall consider only that evidence presented or introduced at the hearing, but shall not be bound by any laws of evidence of this state. All witnesses must be sworn before testifying. A full and complete record shall be kept of all proceedings and all testimony shall be recorded, but need not be transcribed unless the matter be appealed. Four (4) members of the commission shall constitute a quorum, one of whom must be the chairman. No member shall sit as a member of the commission to hear any matter in which he has an interest, nor shall he represent any interested party or witness at a hearing. Any interested party may challenge any member of the commission in writing, served upon the chairman, five (5) days in advance of the sched-

uled time of any hearing stating the reasons therefor, and if the commission shall find merit in the challenge, it shall disqualify the challenged member. A decision of a majority of the commission members sitting shall constitute the decision of the commission on any issue presented for its decision. The commission shall have continuing jurisdiction over all matters heard by it, to examine additional evidence or to hear additional testimony, and to revise, modify, alter, amend or reverse all orders, findings and determinations made by it at any time and shall not lose jurisdiction unless and until jurisdiction has been taken by a court of competent jurisdiction in a proceeding filed therein as provided by section 66-1939. The commission may postpone or continue a hearing from time to time as it deems necessary. As soon as possible after the hearing, the commission shall render its decision and order in writing, stating its findings and conclusions signed by all commission members joining in the decision. If an interested party fails to appear at the hearing after due notice, and good cause for continuance is not shown, the commission shall render its decision upon the evidence presented to it. Copies of such decision shall be served upon all interested parties by registered mail, return receipt requested, and shall be kept on file in the office of the commission in Helena, Montana, open to public inspection. Any witness subpoenaed shall be entitled to the same fees and mileage as is prescribed by law in judicial proceedings in the district courts of this state in civil actions, but the payment of such fees and mileage must be paid out of and kept within the limits of the funds created. Depositions may also be taken and used as in civil cases in the district courts. In the absence of an appeal, the decision of the commission shall become final and take effect thirty (30) days after service of the decision upon all interested parties appearing. If an appeal is taken to a district court or to the supreme court, and the decision of the commission is reversed or in any way modified, the commission will amend its decision to conform to the ruling of the court no later than the date upon which the right to appeal or petition for rehearing by the court shall expire.

(c) **Subpoena—enforcement by warrant of arrest.** Upon written application from any interested party to a hearing or upon the request of any member of the com-

Subpoena—
enforcement by
warrant of arrest.

mission, or at his own discretion, the chairman may issue a subpoena requiring the attendance and testimony of any witness present in the state of Montana, and he may further demand of such a witness that he produce any papers, books, records or documents within the power of such witness to obtain, the subpoena to be substantially in the following form:

BEFORE THE MONTANA REAL
ESTATE COMMISSION

In the Matter of the (Appli-)
cation of John Doe for a Real)
Estate Broker's License) or)
(Charge Against John Doe, a) SUBPOENA (DUCES
Licensed Real Estate Broker,) TECUM)
for Violation of the Real Es-)
tate License Act of 1963).)

THE STATE OF MONTANA SENDS GREETING TO:

Pursuant to the Real Estate License Act of 1963, as amended,

WE COMMAND YOU, that all and singular, business and excuses being set aside, you appear and attend before the Montana Real Estate Commission at (its offices in the State Capitol Building, in Helena, Montana) (at _____, Montana), at _____ o'clock _____ M., on the _____ day of _____, 19_____, then and there to testify as a witness in the above-entitled matter, (and that you bring with you and there produce the following papers, books, records, or documents now in your custody or under your control, namely: _____)

GIVEN at Helena, Montana, this _____ day of _____, 19_____.

MONTANA REAL ESTATE COMMISSION

Chairman

All subpoenas issued shall be served as provided in Rule 45(c), Montana Rules of Civil Procedure. If a witness

shall fail or refuse to attend a hearing, or fail to produce the papers, books, records, or other documents demanded of him, in accordance with any subpoena so issued and served, the chairman, upon proof of service of the subpoena, may issue a warrant to the sheriff of the county where the witness may be, to arrest the witness and bring him before the commission where his attendance is required, together with any papers, books, records or documents demanded in such subpoena. Such warrant shall be substantially in the following form:

BEFORE THE MONTANA REAL
ESTATE COMMISSION

In the Matter of the (Application)
of John Doe for a Real Estate)
Broker's License) or (Charge) WARRANT OF
Against John Doe, a Licensed) ARREST
Real Estate Broker, for Violation)
of the Real Estate License Act)
of 1963).)

THE STATE OF MONTANA, TO ANY SHERIFF, CONSTABLE, MARSHAL, HIGHWAY PATROL OFFICER OR POLICE OFFICER IN THIS STATE:

Subpoena having been issued by the chairman of the Montana Real Estate Commission pursuant to the Real Estate License Act of 1963, as amended, commanding the attendance of the above-named _____ to appear before said commission at (its offices in the Capitol Building in Helena, Montana) at _____ o'clock _____ M., on the _____ day of _____, 19_____, (and that he bring with him certain named papers, books, records or documents) and that the above-named _____ having failed and refused to appear at the said time and place (or failed to produce the papers, books, records and documents demanded),

YOU ARE THEREFORE COMMANDED FORTHWITH to arrest the above-named _____ and bring him before me at (the offices of the Montana Real Estate Commission in the State Capitol Building in Helena, Montana) (together with the papers, books, records and documents demanded), at _____ o'clock _____ M., on the _____ day of _____, 19_____.

Dated at Helena, Montana, this day of
....., 19.....

MONTANA REAL ESTATE COMMISSION

.....
Chairman

Where, in any proceeding before the commission, any witness shall fail or refuse to testify, the giving of his testimony may be enforced in the same manner as courts of competent jurisdiction enforce testimony of witnesses in civil cases in the courts of this state.

"Interested party." (d) **Definitions.** As used in this section, the term "interested party" means:

(1) The party or parties charged with any violation of this act or an applicant for issuance of a real estate broker's or salesman's license, as the case may be.

(2) All partners or business associates of the party or parties charged, or of the applicant, as the case may be, and all officers, directors and stockholders of any corporation through or for which the party or parties charged sell real estate as defined in this act.

(3) If the party charged is a broker, then any salesman employed by him; if a salesman, then the broker employing him.

Repealing clause. Section 9. Sections 66-1938 and 66-1942, R.C.M., 1947, are hereby repealed.

Severability clause. Section 10. If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, impair, or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative.

Repealing clause. Section 11. All acts or parts of acts in conflict herewith are hereby repealed.

Approved: March 7, 1969.

CHAPTER NO. 262

An Act to Generally Revise the Montana Juvenile Code Title 10, Chapter 6 by Redefining Delinquent Child; Placing the Jurisdiction of Persons Under Eighteen Charged With Violating Any Laws of the State or City Ordinance With the Juvenile Court; Allowing the County Attorney Under Direction of the Juvenile Judge to File an Information Against a Child Sixteen or Over Who Has Committed Murder, Rape, Arson, Manslaughter, Robbery or Burglary; Deleting Reference to Separate Facilities Used for Juveniles Confined in the State Prison; Giving the District Court Judge Discretionary Power to Appoint Committees to Assist Him in Juvenile Matters; Amending Sections 10-602, 10-603, 10-607, 10-610, 10-622, 10-623, 10-625, 10-626, 10-628, 10-630, and 80-2204, R.C.M. 1947; and Repealing Sections 75-3001, 75-3002, 10-604, 10-605, 10-609, 10-618, 10-619, 10-620, and 10-632, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 10-602, R.C.M. 1947, is amended to read as follows: Amending clause.

"10-602. **Definitions.** (1) Whenever the words 'the court' are used in this act, they mean the juvenile department of the district court as established by this act. Whenever the district court is meant, it is referred to as the district court.

The word 'child' means a person less than eighteen years of age. "Child."

The word 'adult' means a person eighteen years of age or older. "Adult."

The singular shall be construed to include the plural, and the plural the singular, and the masculine the feminine, when consistent with the intent of this act.

(2) The words 'delinquent child' include:

(a) A child who has violated any ordinance of any city. "Delinquent child."

(b) A child who has violated any law of the state.

(c) A child who by reason of being wayward or